

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2007 OCT 16 P 3:02

DISTRICT OF UTAH

BY: DEPUTY CLERK

KARL DEE KAY,

Plaintiff,

vs.

MIKE WHITAKER, et al.,

Defendants.

ORDER ADOPTING
REPORT & RECOMMENDATION

Case No. 2:07 CV 35 TC

Plaintiff Karl Dee Kay, an inmate at the Utah State Prison, filed a *pro se* civil complaint against Defendant Mike Whitaker, *et al.*, for employment discrimination under the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* Specifically, Mr. Kay alleged that the Defendants violated his civil rights and committed employment discrimination by terminating him from his job because of his prior conviction as a sex offender. Defendant Mike Whitaker, through counsel, filed a Motion to Dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

The case was referred to Magistrate Judge David Nuffer pursuant to 28 U.S.C. § 636(b)(1)(B). On September 23, 2007, Judge Nuffer issued a Report and Recommendation (the "R&R") that recommended granting the Defendants' Motion to Dismiss because Mr. Kay's prior conviction as a sex offender did not place him into a protected class, and he is therefore not

eligible to make an unlawful discharge claim under 42 U.S.C. § 2000e-2(a)(1).

The parties were given ten days to file objections to the R&R and were cautioned that failure to file objections could constitute a waiver of those objections on subsequent appellate review. There were no objections to the R&R.

The court has conducted a *de novo* review of the issues and agrees with Judge Nuffer's recommendation. Accordingly, the Report and Recommendation is adopted as the order of this court. Defendants' Motion to Dismiss is **granted** and Plaintiff's case is **dismissed** without prejudice.

DATED this 16 day of October, 2007.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge